

REMARKS/ARGUMENTS

I. STATUS OF CLAIMS

Claims 1-15 remain in this application. Claims 1, 4, 6, 9, 11, and 14 have been amended. It should be noted that Applicant has elected to amend said Claims solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making this amendment, Applicant has not and does not in any way narrow the scope of protection to which Applicant considers the invention herein to be entitled and does not concede, in any way, that the subject matter of such Claims was in fact taught or disclosed by the cited prior art. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

II. CLAIM REJECTIONS – 35 U.S.C. § 102

The Office Action rejected Claims 1, 2, 4, 6, 7, 9, 11, 12, and 14 under 35 U.S.C. § 102(e) as being clearly anticipated by Shah et al., U.S. Patent No. 6,292,832 (Shah). The rejection is respectfully traversed.

Claims 1, 6, and 11 have been amended to clarify the invention and appear as follows:

1. A process for determining latency between multiple servers and a client across a network in a computer environment, comprising the steps of:  
receiving a request for latency metrics on a server;  
wherein said latency metric request specifies a particular client;

providing a latency management table;  
wherein said latency management table comprises a list of IP addresses  
along with corresponding Border Gateway Protocol (BGP) hop  
counts, dynamic hop counts, and Round Trip Times (RTT);  
looking up the latency metric for said client in said latency management  
table;  
sending said latency metric to the requesting server;  
wherein only the BGP hop count for said client in said latency  
management table is used for said latency metric upon an initial  
request for said client; and  
wherein the dynamic hop count and RTT data for said client in said  
latency management table are used for said latency metric for  
subsequent requests for said client.

6. An apparatus for determining latency between multiple servers and a  
client across a network in a computer environment, comprising:  
a module for receiving a request for latency metrics on a server;  
wherein said latency metric request specifies a particular client;  
a latency management table;  
wherein said latency management table comprises a list of IP addresses  
along with corresponding Border Gateway Protocol (BGP) hop  
counts, dynamic hop counts, and Round Trip Times (RTT);  
a module for looking up the latency metric for said client in said latency  
management table;

a module for sending said latency metric to the requesting server;  
wherein only the BGP hop count for said client in said latency  
management table is used for said latency metric upon an initial  
request for said client; and  
wherein the dynamic hop count and RTT data for said client in said  
latency management table are used for said latency metric for  
subsequent requests for said client.

11. A program storage medium readable by a computer, tangibly embodying a  
program of instructions executable by the computer to perform method  
steps for determining latency between multiple servers and a client across  
a network in a computer environment, comprising the steps of:  
receiving a request for latency metrics on a server;  
wherein said latency metric request specifies a particular client;  
providing a latency management table;  
wherein said latency management table comprises a list of IP addresses  
along with corresponding Border Gateway Protocol (BGP) hop  
counts, dynamic hop counts, and Round Trip Times (RTT);  
looking up the latency metric for said client in said latency management  
table;  
sending said latency metric to the requesting server;  
wherein only the BGP hop count for said client in said latency  
management table is used for said latency metric upon an initial  
request for said client; and

wherein the dynamic hop count and RTT data for said client in said latency management table are used for said latency metric for subsequent requests for said client.

In particular, Shah does not teach or disclose a system wherein only the BGP hop count for said client in said latency management table is used for said latency metric upon an initial request for said client and wherein the dynamic hop count and RTT data for said client in said latency management table are used for said latency metric for subsequent requests for said client as claimed in Claims 1, 6, and 11. Shah teaches away from the claimed invention by teaching that IGP sub-group metrics are selected and members of the subgroup compared to find a best member of the subgroup (col. 18, line 57-col. 19, line 14). Shah does not contemplate that only the BGP hop count for said client in said latency management table is used for said latency metric upon an initial request for said client as claimed in Claim, 1, 6, and 11. Shah makes no mention that the BGP hop count from a latency management table for the client is used, or when it is used, as a latency metric.

Shah further does not contemplate that the dynamic hop count and RTT data for said client in said latency management table are used for said latency metric for subsequent requests for said client as claimed in Claims 1, 6, and 11. Shah makes no mention of which metrics from a latency management table are used for a latency metric upon subsequent latency metric requests for a client.

Anticipation under 35 U.S.C. § 102 requires a reference to teach or disclose each and every element, limitation, or step of a claim. Since Claims 1, 6, and 11 include at

least one element not found in Shah, the Shah patent does not anticipate Claims 1, 6, and 11 under 35 U.S.C. § 102.

Claims 1, 6, and 11 are allowable. Claims 2, 4 and 7, 9, and 12, 14 are dependent upon Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC § 102(e).

### III. CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected Claims 3, 8 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Shah (6,292,832) in view of what is well known in the art.

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 6, and 11, above. Claims 3 and 8 and 13 are dependent upon independent Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

### IV. CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected Claims 5, 10, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Shah (6,292,832) in view of McCanne (6,415,323).

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 6, and 11, above. Claims 5 and 10 and 15 are dependent upon independent Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

XI. CONCLUSIONS & MISCELLANEOUS

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Applicants believe that all issues raised in the Office Action have been addressed and that allowance of the pending claims is appropriate. Entry of the amendments herein and further examination on the merits are respectfully requested.

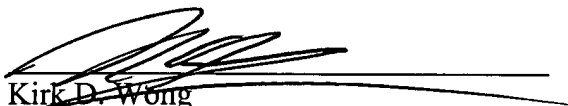
The Examiner is invited to telephone the undersigned at (408) 414-1214 to discuss any issue that may advance prosecution.

No fee is believed to be due specifically in connection with this Reply. To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. § 1.136. The Commissioner is authorized to charge any fee that may be due in connection with this Reply to our Deposit Account No. 50-1302.

Respectfully submitted,

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

on January 4, 2005  
(Date)

by   
(Signature)